

## **TEXT OF REGULATIONS**

### **CALIFORNIA CODE OF REGULATIONS**

#### **Title 4. Business Regulations**

#### **Division 11. California Pollution Control Financing Authority**

#### **Article 9. California Recycle Underutilized Sites (Cal ReUSE) Program**

##### **§ 8090. Definitions.**

The following definitions shall govern construction of Article 9.

- (a) "Applicant" means any for-profit or not-for-profit organization, school district, participating party as defined in California Health and Safety Code Section 44506, or public agency as defined in California Health and Safety Code Section 44509 applying for a Loan.
- (b) "Application" means the information referred to in Section 8093.
- (c) "Authority" means the California Pollution Control Financing Authority, organized and existing under and by virtue of Division 27 (commencing with Section 44500) of the California Health and Safety Code.
- (d) "Borrower" means an Applicant whose Loan has been approved and who has executed a Loan Agreement.
- (e) "Brownfield" means a real estate parcel, or improvements located on the parcel, or both that parcel and the improvements, which is abandoned, idled, or underused, due to real or perceived environmental contamination, including, but not limited to, soil or groundwater contamination, the presence of underground storage tanks, or the presence of asbestos or lead paint on the parcel or in the improvements located on the parcel.
- (f) "Brownfield Project" means a project for the site assessment and characterization of, and/or Planning for Remediation of Hazardous Material at a Brownfield.
- (g) "Census Designated Place" means a place designated as a census designated place by the Bureau of the Census.
- (h) "Consultant" means any of the following:
  - (1) A Class II environmental assessor registered by the Office of Environmental Health Hazard Assessment pursuant to Chapter 6.98 (commencing with Section 25570) of Division 20 of the California Health and Safety Code;
  - (2) A professional engineer registered in this State;
  - (3) A certified engineering geologist registered in this State; or
  - (4) A licensed hazardous substance contractor certified pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the California Business and Professions Code. A licensed hazardous substance contractor shall hold the equivalent of a degree from an accredited public or private college or university or a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science; engineering; geology; environmental or public health; or a directly related science field.

In addition, a Consultant shall have at least three years experience in conducting site assessment and characterization.

- (i) "Development Entity" means an entity engaged in the development of real estate.
- (j) "Economically Struggling Community" means a community that the Applicant demonstrates to the satisfaction of the Strategic Partner is any one or more of the following:

- (1) A community with an unemployment rate equal to or greater than 125% of the statewide average based on the California Employment Development Department's most recent annual average for sub-county areas.
  - (2) A community with median family income of less than 80% of the statewide average based on the most recent census data available for cities or Census Designated Places. (If no city or Census Designated Place level data is available, or if the Applicant chooses to identify an area that is smaller than a city or Census Designated Place, such as census tract or tracts, smaller areas will be used.)
  - (3) A community with a poverty rate equal to or greater than 110% of the statewide average based on the most recent census data available for cities or Census Designated Places. (If no city or Census Designated Place level data is available, or if the Applicant chooses to identify an area that is smaller than a city or Census Designated Place, such as census tract or tracts, smaller areas will be used.)
  - (4) A state designated Enterprise Zone (including a Local Agency Military Base Recovery Area, Manufacturing Enhancement Area or Targeted Tax Area).
  - (5) A federally designated Empowerment Zone or Enterprise Community.
  - (6) A redevelopment project area adopted pursuant to California Health and Safety Code Sections 33000 et seq., where the Strategic Partner determines that the project area meets the definition of blighted area contained in California Health and Safety Code Section 33030.
  - (7) A city or county with a military base designated for closure pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526), the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510), or any subsequent closure approved by the President of the United States without objection by the Congress. The provision will apply to proposed projects within two miles of a military base closure in an urban setting and to proposed projects within five miles of a military base closure in a rural setting.
- (k) "Eligible Costs" means reasonable and necessary Brownfield Project costs, including but not limited to costs associated with any of the following:
- (1) Site assessment and characterization.
  - (2) Technical Assistance.
  - (3) Planning for Remediation of Hazardous Material.
  - (4) Obtaining access to a Brownfield to conduct a Brownfield Project.
- (l) "Empowerment Zone" means any area that meets the standards for designation as an empowerment zone under 26 U.S.C. Section 1392.
- (m) "Enterprise Community" means any area that meets the standards for designation as an enterprise community under 26 U.S.C. Section 1392.
- (n) "Enterprise Zone" means any area within a city, county, or a city and county that is designated as an enterprise zone by the Trade and Commerce Agency in accordance with the provisions of Section 7073 of the California Government Code.
- (o) "Executive Director" means the Executive Director of the California Pollution Control Financing Authority.
- (p) "Feasibility Study" means the identification and evaluation of technically feasible and effective Remedial Action alternatives to protect public health and the environment at a Brownfield for purposes of developing a Remedial Action Plan.
- (q) "Final Report" means a written document prepared by an Independent Consultant that describes the Independent Consultant's findings resulting from the site assessment and characterization, Planning for Remediation of Hazardous Material, and/or technical assistance performed by the Independent Consultant in

connection with a Brownfield.

- (r) "Forgiven Loan" means a Loan for which repayment of all, or a portion, of the Loan is forgiven upon the conditions set forth in Section 8097.
- (s) "Hazardous Material" means a hazardous material as defined in Section 25260(d) of the California Health and Safety Code.
- (t) "Hazardous Waste Reporting Laws" means any and all state, federal and local laws, including, without limitation, statutes, rules, regulations, ordinances, administrative orders, judicial orders or consent decrees, requiring the reporting to any governmental, quasi-governmental or regulatory entity of any release, threatened release, presence or existence of a Hazardous Material or any similar substance or material into the environment.
- (u) "Independent Consultant" means a Consultant who meets all of the following requirements:
  - (1) The Consultant is not an employee of, general or limited partner or a shareholder in, or have any other ownership or management interest in the Borrower, a known responsible party, or a prospective buyer of the Brownfield;
  - (2) Consultant does not receive any source of income from the Borrower, a known responsible party, or a prospective buyer of the Brownfield, other than the payment of fees for professional services unless the Consultant is acting in his or her capacity as an employee of a governmental entity; and
  - (3) The Consultant does not accept, or agree to accept, any payment that is in any way contingent upon the outcome of a Final Report.
- (v) "Loan" means a loan made in accordance with the procedures set forth in this Article 9.
- (w) "Loan Agreement" means a written agreement for a Loan entered into between a Borrower and the Strategic Partner, or where the Strategic Partner is the Borrower, between the Borrower and the Authority.
- (x) "Local Agency Military Base Recovery Area" means any military base or former military base or portion thereof that is designated as a local agency military base recovery area under the Local Agency Military Base Recovery Area Act (Cal. Govt. C. Section 7105, et seq.).
- (y) "Manufacturing Enhancement Area" means an area designated as a manufacturing enhancement area by the Trade and Commerce Agency in accordance with the provisions of California Government Code Section 7073.8.
- (z) "Match" means the Strategic Partner's financial contribution to the Brownfield Project in an amount equal to 25 percent (25%) of the Loan amount. Match also means a monetary contribution and/or related costs of overhead and staffing in amounts and percentages of each as set forth in the written agreement between the Strategic Partner and the Authority, by a Strategic Partner or other entity involved with the Brownfield Project.
- (aa) "Oversight Agency" means any of the following:
  - (1) The applicable Regional Water Quality Control Board;
  - (2) The California Department of Toxic Substances Control;
  - (3) A local agency, if the Brownfield is an underground storage tank site subject to Chapter 6.7 (commencing with section 25280) of Division 20 of the California Health and Safety Code and if all of the requirements set forth in subdivision (d)(2) of California Health and Safety Code Section 33459.1 are satisfied;
  - (4) An agency certified as a Certified Unified Program Agency or CUPA pursuant to Chapter 6.11 of Division 20 of the California Health and Safety Code (commencing with Section 25404); or

(5) The agency designated as the administering agency pursuant to California Health and Safety Code Section 25262.

- (ab) “Planning for Remediation of Hazardous Material” means conducting a Feasibility Study, conducting a Remedial Investigation, and/or preparing a Remedial Action Plan.
- (ac) “Public Infrastructure” means facilities accessible to the public that may include, but are not limited to, public roads, sewers, drainage, water, natural gas and/or electricity, telephone, and transportation services.
- (ad) “Remedial Action Plan” means a plan for performing a Remedy or taking a Remedial Action.
- (ae) “Remedial Investigation” means those actions necessary to determine the full extent of a Hazardous Material at a Brownfield, identify the public health and environment threat posed by the Hazardous Material, collect data on possible remedies, and otherwise evaluate the Brownfield, for purposes of developing a Remedial Action Plan.
- (af) “Remedy or Remedial Action” has the same meaning as that term is used in California Health and Safety Code Section 25322, except that, for purposes of this article, the references in Section 25322 to a “hazardous substance” shall be deemed to be references to a “Hazardous Material”.
- (ag) “Small Business” means that term as defined in Title 4, Division 11, Article 2, Section 8020 of the California Code of Regulations.
- (ah) “Strategic Partner” means an entity chosen by the Authority in accordance with Section 8100 that receives and processes Applications, and/or provides Technical Assistance, and/or disburses funds, and/or provides administrative services to Borrowers for purposes of this Article 9 pursuant to a written agreement with the Authority. In the event the Authority does not contract with a Strategic Partner, Strategic Partner means the Authority. Under certain circumstances, the Strategic Partner may be the Applicant or the Borrower. In the event the Strategic Partner is an Applicant or a Borrower, the Authority shall be the Strategic Partner as to such Application and Loan.
- (ai) “Targeted Tax Area” means an area designated as a targeted tax area by the California Trade and Commerce Agency in accordance with the provisions of California Government Code Section 7079.
- (aj) “Technical Assistance” means information, education, training and assistance provided to an Applicant and/or Borrower by a Strategic Partner or its agent regarding Brownfield site assessment and characterization, Planning for Remediation of Hazardous Material and/or environmental regulation. Technical Assistance does not include any actions that would constitute participation in the management of property as defined in Section 25548.1 of the California Health and Safety Code or in 42 U.S.C. Section 9601(20)(F). Unless a Strategic Partner is a governmental entity that is exercising its regulatory authority under other applicable laws, regulations, inter-agency agreements, or governmental programs, a Strategic Partner shall not participate in the management of property as defined in Section 25548.1 of the California Health and Safety Code or in 42 U.S.C. Section 9601(20)(F).

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code.

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**§ 8091. Brownfield Project Loan Eligibility.**

An Applicant shall be eligible for a Loan when the Strategic Partner determines ~~that~~ all of the following:

- (a) The Applicant submits an Application that meets the requirements of Section 8092;
- (b) The Applicant proposes a Brownfield Project;
- (c) The Loan is requested to fund a portion of Eligible Costs associated with a Brownfield Project;
- (d) The Applicant demonstrates the ability to retain, or is, a Development Entity;
- (e) If the Loan and Match together does not finance all costs of the Brownfield Project, the Applicant identifies a funding source or financial means to finance the costs of the Brownfield Project not covered by the Loan;
- (f) The Applicant identifies a potential funding source or financial means to repay the Loan;
- (g) The Applicant demonstrates the ability to gather likely sources of capital to develop the Brownfield;
- (h) The Applicant has not been convicted of a felony or misdemeanor involving the regulation of Hazardous Materials, including, but not limited to, a conviction of a felony or misdemeanor under California Health and Safety Code Section 25395.13; and
- (i) Any affirmative responses provided in Section 8092(m) do not materially impugn the integrity of the Borrower or will not adversely affect the Borrower's ability to comply with these regulations.
- (j) The Brownfield is not a parcel:
  - (1) Currently listed on the National Priorities List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Section 9605(a)(8)(B)).
  - (2) Currently listed for a response action pursuant to Section 25356 of the California Health and Safety Code.
  - (3) That is, or has ever been, owned or operated by a department, agency, or instrumentality of the United States.
  - (4) That is a hazardous waste facility that is subject to the requirements of Article 9, Chapter 6.5, Division 20 of the California Health and Safety Code.

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code.

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**§ 8092. Brownfield Project Application Content.**

An Application shall include all of the following:

- (a) The Applicant's name, address, telephone number, federal tax identification number, type of business or entity, the date the business or entity was established.
- (b) Whether the Applicant qualifies as a Small Business.
- (c) The identity of the owner and any operators of the Brownfield, including name, address, and telephone number.
- (d) If the Applicant is not the owner of the Brownfield, evidence of:
  - (1) The Applicant's legal interest in the Brownfield;
  - (2) Permission of the owner of the Brownfield for the Applicant or the Applicant's agent(s) to have access to the Brownfield (governmental action already taken or that is expected to be taken prior to disbursement of loan proceeds to gain access or control of the Brownfield will be deemed to be permission to have access to the Brownfield); and
  - (3) Permission of the owner of the Brownfield for the Applicant or the Applicant's agent(s) to perform a Brownfield Project on the Brownfield (governmental action already taken or that is expected to be taken prior to disbursement of loan proceeds to gain access or control of the Brownfield will be deemed to be permission to perform a Brownfield Project on the Brownfield).
- (e) Information regarding the Brownfield for which the Loan is being requested, including:
  - (1) A description of the Brownfield including:
    - (A) the location of the Brownfield;
    - (B) evidence of the Brownfield's location in an Economically Struggling Community, if applicable;
    - (C) a site layout that includes the location and dimensions of any existing buildings, utilities, and other pertinent features, if available;
    - (D) the current use and zoning of the Brownfield;
    - (E) the current land uses and zoning of adjacent property and the surrounding neighborhood;
    - (F) identification of Public Infrastructure and its proximity to the Brownfield;
    - (G) previous use of the Brownfield;
    - (H) known and suspected Hazardous Material located at the Brownfield;
    - (I) proposed reuse of the Brownfield, if known;
    - (J) the estimated time period for completion, components, and costs of the Brownfield Project; and
    - (K) the goals and objectives of and the benefit to the community from the Brownfield Project or development of the Brownfield.
  - (2) Development timetable for the Brownfield.

- (3) A description of obstacles to reuse of the Brownfield (e.g., regulatory issues, complex remediation, liability, and/or marketability).
- (4) Identification of local regulatory and land use jurisdictions within which the proposed Brownfield Project is located.
- (5) A description of community involvement and local government support for the Brownfield Project.
- (f) A description of the Applicant's experience managing projects similar to the one proposed and the qualifications of key personnel involved.
- (g) Identification of a person that meets the definition of an Independent Consultant that will perform the activities necessary to complete the Brownfield Project.
- (h) Identification of the proposed Oversight Agency if the proposed Loan will be used to finance Planning for Remediation of Hazardous Material.
- (i) Identification of potential funding sources for:
  - (1) Completion of the Brownfield Project.
  - (2) Development of the Brownfield.
  - (3) Repayment of the Loan.
- (j) A description of requested Eligible Costs to be financed by the Loan.
- (k) The requested Loan amount and term.
- (l) Information demonstrating ability to provide Match for the Loan.
- (m) Information regarding any past or current bankruptcies, loan defaults, foreclosures, convictions, or criminal, civil or administrative investigations, orders, proceedings, litigation, settlements, or judgments, by or involving the Borrower or to which Borrower is or was a party.
- (n) A signed, notarized statement from the Applicant whereby the Applicant agrees to all of the following:
  - (1) To provide Application-related documentation to the Strategic Partner upon request;
  - (2) That the Application will be evaluated according to Authority regulations, and that a Loan is not an entitlement;
  - (3) That information submitted to the Strategic Partner or the Authority is subject to the California Public Records Act; and
  - (4) Under penalty of perjury, that all information provided to the Strategic Partner or the Authority is true and correct, and that the Applicant has an affirmative duty to notify the Strategic Partner or the Authority of changes causing information in the Application or other submittals to become false.

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code.

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**§ 8093. Application Availability, Submission and Strategic Partner Review.**

- (a) Loan Applications shall be available from the Authority's staff or from any Strategic Partner. Applicants can obtain a list of Strategic Partners or a copy of the Application by contacting the Authority's staff at the following address: California Pollution Control Financing Authority, 915 Capitol Mall, Room 457, Sacramento, California, 95814 Attention: California Recycle Underutilized Sites (Cal ReUSE) Program, or by telephoning (916) 654-5610. The Application shall contain the information set forth in Section 8092. The Applicant shall submit one (1) complete and signed Application to a Strategic Partner.
- (b) The Strategic Partner shall review each Application in accordance with the provisions of this Article 9. No later than forty-five (45) days following receipt of an Application, the Strategic Partner shall in writing either:
  - (1) Notify the Applicant that the Application is approved;
  - (2) Notify the Applicant that the Application is denied and the reasons for the denial; or
  - (3) Notify the Applicant if the Application remains incomplete and describe what additional information the Applicant needs to submit to complete the Application. If the Strategic Partner determines that any document submitted in the Application is not adequate, the Application shall be deemed incomplete.

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code.



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**§ 8094. Loan Approval and Commitment Letter.**

**(a) Loan Approval.**

- (1) The Strategic Partner shall be authorized to approve an Application when:
  - (A) The Application is complete and meets all of the requirements of Section 8091; and
  - (B) Funds are available.
- (2) The Strategic Partner shall give priority to Applications for Loans as follows:
  - (A) First, to Brownfields located in Economically Struggling Communities;
  - (B) Second, to Brownfields located in areas with existing Public Infrastructure; and
  - (C) Third, to other Brownfields.

**(b) Commitment Letter.** If the Loan is approved, the Strategic Partner shall notify the Applicant by a letter committing the Authority to provide Loan funds so long as the Applicant strictly complies with the terms and conditions contained therein. The commitment letter shall include at least all of the following:

- (1) Name(s) of the Borrower and any guarantor.
- (2) Loan amount and term.
- (3) A description of Eligible Costs to be financed by the Loan.
- (4) Description of Match, including amount and type.
- (5) Interest rate and any required loan fees.
- (6) A requirement that any evidence described in Section 8092 as being expected prior to the disbursement of loan proceeds shall be received as a condition to disbursement of loan proceeds.
- (7) Disbursement process, including a statement that Loan proceeds shall be disbursed on a reimbursement basis.
- (8) Insurance requirements, if any.
- (9) Conditions and covenants.
- (10) The date when the commitment expires.
- (11) A statement that the Authority reserves the right to modify or cancel the commitment upon failure of the Applicant to execute a Loan Agreement that includes all of the terms and conditions set forth in the commitment letter, or if the Authority or the Strategic Partner becomes aware of any matter which, if known at the time of Loan review or approval, would have resulted in the Application not being approved. Such matters may include, but will not be limited to:
  - (A) A determination that the Application was prepared incorrectly, contains incorrect information or omits required information.
  - (B) Business circumstances that would negatively affect the Applicant's ability to repay the Loan.

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code.

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**§ 8095. Loan Terms.**

The terms and conditions of a Loan shall be set forth in a Loan Agreement executed by the Borrower and shall include, at a minimum, all of the following terms and conditions:

- (a) A fixed interest rate equal to the average earnings rate of the State's Surplus Money Investment Fund for the calendar year prior to the date the Loan is made;
- (b) A Loan amount not greater than one hundred twenty five thousand dollars (\$125,000) for Eligible Costs with respect to a Brownfield. For purposes of this subdivision, contiguous or related parcels included in a Brownfield Project that are owned or controlled by the same Borrower shall together be deemed to constitute one Brownfield;
- (c) A Loan term not to exceed thirty-six (36) months;
- (d) Principal and interest to become due and payable in full upon the earliest of:
  - (1) Issuance of either a grading permit or a building permit for the Brownfield;
  - (2) Sale or transfer (including, without limitation, an option to purchase or a contract of purchase) of all or part of the Brownfield;
  - (3) The maturity date set forth in the Loan Agreement, which date shall not be more than thirty-six (36) months after the date of the Loan; or
  - (4) The occurrence of an event of default under the Loan Agreement.
- (e) Evidence that the cash portion of the Match will be met at closing of the Loan and a description of and acknowledgment of credit for any non-cash portion of the Match;
- (f) Disbursement and repayment procedures pursuant to Section 8096;
- (g) A provision that any unused Loan funds shall revert to the Authority;
- (h) Default provisions including, but not limited to, interest from and after the date of default at a rate of ten percent (10%) per annum;
- (i) Agreement to comply with the Authority's program statutes and regulations;
- (j) Agreement that the Borrower will defend, indemnify and hold harmless the Authority and the State, and all officers, trustees, agents and employees of the same, from and against any and all claims, losses, costs, damages, or liabilities of any kind or nature, whether direct or indirect, arising from or relating to the Loan, the Brownfield or this program, including but not limited to, any and all claims, losses, costs, damages, or liabilities arising from or related to the presence, release, threatened release, investigation or remediation of Hazardous Material of the Brownfield;
- (k) Agreement to comply with laws outlawing discrimination including, but not limited to those prohibiting discrimination because of sex, race, color, ancestry, religion, creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer or genetic characteristics), sexual orientation, political affiliation, position in a labor dispute, age, marital status, and denial of statutorily-required employment-related leave;
- (l) Agreement that continued compliance with program requirements is the Borrower's responsibility;

- (m) Agreement that if the Loan is used for Eligible Costs pursuant to Section 8090(k)(1) and/or Section 8090(k)(3), that the Borrower will cause the Independent Consultant to prepare a Final Report;
- (n) Agreement that the Borrower will provide or cause to be provided to the Strategic Partner a copy of the Final Report within 30 days of completion of the Final Report;
- (o) Agreement that the Borrower will comply with all Hazardous Waste Reporting Laws applicable to the Brownfield or resulting from the contents of the Final Report;
- (p) Agreement that the Borrower will deliver to the Strategic Partner within 90 days after Borrower's receipt of the Final Report a certification to the Authority in writing and under penalty of perjury all of the following:
  - (1) That the Borrower is informed of and understands all Hazardous Waste Reporting Laws applicable to the Brownfield and the contents of the Final Report;
  - (2) Whether there was a reporting requirement under any of the Hazardous Waste Reporting Laws applicable to the Brownfield or resulting from the contents of the Final Report;
  - (3) That the Borrower has made all the reports required by the Hazardous Waste Reporting Laws applicable to the Brownfield or resulting from the contents of the Final Report in the manner and within the time periods required by such Hazardous Waste Reporting Laws; and
  - (4) To whom and when such report was made.
- (q) Agreement that Borrower's failure to comply with any Hazardous Waste Reporting Law applicable to the Brownfield or resulting from the contents of the Final Report, or failure to deliver the certification required by Section 8095(p) within the time period required, will constitute an event of default under the Loan resulting in all of the principal and interest on the Loan becoming immediately due and payable.
- (r) If the Loan is for Planning for Remediation of Hazardous Materials, agreement that upon entering into the Loan Agreement, the Borrower will identify an Oversight Agency that will oversee and approve the activities that constitute Planning for Remediation of Hazardous Materials;
- (s) Agreement by the Borrower to comply with all applicable law, including but not limited to statutes, rules, regulations, administrative orders and agreements, and judicial orders or consent decrees that apply to the Brownfield, related to or arising from assessment, characterization and remediation of a Brownfield, including but not limited to those requiring the preparation of a description of Hazardous Material on the Brownfield and those requiring oversight and supervision to assure the adequacy of any Feasibility Study, Remedial Investigation or Remedial Action Plan by the Oversight Agency;
- (t) Agreement that if the Borrower recovers damages from a person who is liable for the release, threatened release, presence or existence of a Hazardous Material at the Brownfield, any money so recovered shall be used first to repay the Loan, except that the Borrower shall be permitted to retain fees and costs incurred in recovering the damages; and
- (u) Any other provision agreed to by the parties.

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code.

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**§ 8096. Conditions of Funds Disbursement, Funds Disbursement and Loan Repayment Procedures.**

**(a) Conditions of Funds Disbursement.** The Strategic Partner shall not disburse Loan funds unless all of the following conditions are met:

- (1) All other funds for completing the Brownfield Project are obtained and available for use.
- (2) All terms and conditions contained in the commitment letter described in 8094(b) are satisfied;
- (3) Execution of a Loan Agreement, Promissory Note and any other documents, as required, and compliance with all conditions precedent to disbursement contained in the Loan Agreement.

**(b) Funds Disbursement.** The Strategic Partner shall cause funds to be disbursed as follows:

- (1) The Borrower shall sign and submit to the Strategic Partner a signed invoice documenting the service or procedure performed from entities providing materials and services for Eligible Costs covered by the Loan Agreement.
- (2) Upon receipt of the signed invoice, the Strategic Partner, in its sole discretion, shall authorize the disbursement of Loan funds to the Borrower:
  - (A) First, from the cash portion of the Match until depleted, and
  - (B) Second, from the funds of the Authority committed by the Authority for the Loan.

**(c) Loan Repayment Procedures.** The Strategic Partner shall cause any Brownfield Project loan repayment proceeds received from the Borrower to be delivered promptly upon receipt by the Strategic Partner to the following entities in the following order:

- (1) First, to the Authority until the funds advanced by the Authority for the Loan, or a Forgiven Loan, are repaid in full, with interest, and
- (2) Second, to the Strategic Partner to repay any loan to the Borrower by the Strategic Partner in connection with the Brownfield Project, if applicable.

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code.

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**§ 8097. Loan Extensions, Loan Forgiveness and Conditions for Forgiven Loans.**

**(a) Loan Extensions.** Upon written request received from the Borrower, the maturity of a Loan may be extended by the Strategic Partner if both of the following conditions are met:

- (1) The Borrower clearly demonstrates that it is unable to complete the Brownfield Project by the end of the Loan term, and
- (2) The Borrower clearly demonstrates how the Brownfield Project can be completed in the additional time requested.

**(b) Loan Forgiveness.** Upon written request from the Borrower, a Loan may be forgiven by the Strategic Partner if the Borrower, acting reasonably and in good faith, fails to complete the Brownfield Project or proceed with development of the Brownfield.

**(c) Conditions for Forgiven Loans.** Any forgiveness of a Loan hereunder shall be conditioned on:

- (1) The Borrower's execution of a written agreement whereby:
  - (A) The Borrower promises that in the event the Borrower subsequently causes (i) the issuance of either a grading permit or a building permit for the Brownfield or (ii) sells or transfers (including, without limitation, an option to purchase or a contract of purchase) all or part of the Brownfield, the Borrower will repay the forgiven balance of the Loan (and the Strategic Partner shall receive and deliver such funds in accordance with Section 8096(c)); and
  - (B) The Borrower promises that if it recovers damages from a person who is liable for the release, threatened release, presence or existence of a Hazardous Material at the Brownfield, any money so recovered shall be used first by the Borrower to repay the forgiven balance of the Loan, except that the Borrower shall be permitted to retain fees and costs incurred in recovering the damages.
- (2) The Borrower's delivery of documentation to the Strategic Partner evidencing that the Borrower has complied with all applicable laws, including but not limited to statutes, rules, and regulations, administrative orders and agreements, judicial orders, and consent decrees that apply to the Brownfield and relate to or arise from the site assessment and characterization, Planning for Remediation of Hazardous Materials, and remediation of the Brownfield. Such documentation shall include evidence that the Borrower has complied with any applicable requirement to obtain oversight and approval from an Oversight Agency.
- (3) The Borrower's delivery of the Final Report to the Strategic Partner as required by Section 8095(n).
- (4) The Borrower's delivery to the Strategic Partner of the certification as required by Section 8095(p).

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code.

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**§ 8098. Strategic Partner Reports and Records Retention.**

(a) A Strategic Partner shall provide the following quarterly reports to the Authority:

**(1) Applications Received Report.** This report shall include the following information:

- (A) A listing of identified Brownfield Projects for which Applications have been submitted and for which funding is anticipated during the next six months.
- (B) Identification of whether proposed Brownfields are located in Economically Struggling Communities.
- (C) Identification of whether the Strategic Partner is the Applicant.

**(2) Request for Funds Report.** This report shall include the following information for each Brownfield Project to be funded during the next three months:

- (A) A description of the Brownfield Project.
- (B) Identification of whether the Brownfield is located in an Economically Struggling Community.
- (C) Identification of whether the Strategic Partner is the Applicant.
- (D) Identification of whether the Applicant qualifies as a Small Business.
- (E) Requested Loan amount for Brownfield Project.
- (F) Description of Eligible Costs to be funded for the Brownfield Project.
- (G) Proposed Loan term.
- (H) Description of Match for the Brownfield Project including the source and amount of Match.
- (I) Identification of total amount of loan funds requested for the quarter.

**(3) Brownfields Projects Status Report.** This report shall describe the current status of each Brownfield Project for which a Loan (including a Loan for which the Strategic Partner is the Borrower) remains outstanding including:

- (A) A description of activities performed at the Brownfield for the previous three months.
- (B) A statement of whether or not the Strategic Partner has received the Final Report and, if so, a summary of the Final Report that was received during the previous three months.
- (C) A statement of whether or not the Strategic Partner has received the certification as required by Section 8095(p).

**(4) Outstanding Loans Report.** This report shall describe the current repayment status of every Loan (including a Loan where the Strategic Partner is the Borrower) including:

- (A) Name of Borrower.
- (B) Identification of whether the Borrower is a Small Business.
- (C) Identification of whether the Borrower is a Strategic Partner.

- (D) Name of Brownfield Project.
- (E) Street Address of the Brownfield.
- (F) Draw down on Match.
- (G) Current payments.
- (H) Total Loan repayment status.
- (I) If a Loan is extended:
  - i) The date that the Loan was extended, and
  - ii) The current Loan amount and term.
- (J) If a Loan is a Forgiven Loan:
  - i) The date that the Loan was forgiven, and
  - ii) The amount forgiven.

(5) Other reports and documents as reasonably requested by the Authority.

**(b) Brownfields Development Status Report.** A Strategic Partner shall provide an annual report to the Authority that shall describe the current status of the development of each Brownfield for which a Loan (including a Loan where the Strategic Partner is the Borrower) was made including:

- (1) A description of the proposed use for the Brownfield.
- (2) A detailed description of development activities performed at the Brownfield for the previous year.
- (3) Upon completion of development of the Brownfield, a description of the final use for the property.

**(c) Records Retention.** A Strategic Partner shall retain the Application, all documents that were submitted by the Borrower with the Application, and all documents pertaining to the Loan and the Brownfield Project for at least six years after the later of the termination of the Loan, or the completion of actions and the resolution of all issues, that arise as a result of any litigation, claim, negotiation or audit concerning the Loan Agreement or an agreement executed pursuant to Section 8097(c)(1).

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code.



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**§ 8099. Technical Assistance.**

- (a) Upon request of an Applicant or Borrower the Strategic Partner may provide Technical Assistance to assist in the development of a Brownfield Project.
- (b) Technical Assistance provided by a Strategic Partner for the Brownfield Project may count as Match for the Brownfield Project, but may not be reimbursed with Loan funds.
- (c) Unless a Strategic Partner is a governmental entity that is exercising its regulatory authority under other applicable laws, regulations, inter-agency agreements, or governmental programs, a Strategic Partner shall not engage in any actions that would constitute participation in the management of property as defined in Section 25548.1 of the California Health and Safety Code or in 42 U.S.C. Section 9601(20)(F).

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code.

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**§ 8100. Strategic Partner Eligibility and Selection Criteria.**

- (a) A governmental agency or public or private entity shall be eligible to participate as a Strategic Partner and Strategic Partners will be selected by the Authority based upon the following eligibility and selection criteria:
  - (1) Demonstrated ability to provide Technical Assistance to a Development Entity;
  - (2) Demonstrated understanding of the economic and real estate development processes;
  - (3) Demonstrated understanding of environmental assessment and remediation requirements;
  - (4) Demonstrated understanding of Brownfield regulatory and reporting requirements; and
  - (5) Demonstrated partnership experience.
- (b) The services to be provided by a Strategic Partner pursuant to Section 8090(ah) hereof shall be provided as an independent contractor pursuant to a written agreement to be entered into by and between the Strategic Partner and the Authority.
- (c) An entity may not act as a Strategic Partner as to any Brownfield for which such entity is a responsible party as defined by Section 25323.5 of the California Health and Safety Code. However, as to any such Brownfield, the entity may be an Applicant and Borrower, and the Authority shall be the Strategic Partner with respect to such Application and Loan.

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code.

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**§ 8101. Strategic Partner as Applicant and/or Borrower.**

The following shall apply in all cases where the Strategic Partner is the Applicant and/or the Borrower:

- (a) In the event that a Strategic Partner is an Applicant or a Borrower, the Authority shall be the Strategic Partner as to such Application and Loan.
- (b) If the Authority is the Strategic Partner, the Executive Director shall be authorized to:
  - (1) Determine whether the Applicant shall be eligible for a Loan pursuant to Section 8091 hereof.
  - (2) Review the Application and notify the Applicant pursuant to Section 8093 hereof.
  - (3) Approve the Loan and notify the Applicant pursuant to Section 8094 hereof.
  - (4) Cause funds to be disbursed to the Borrower pursuant to Section 8096 hereof.
  - (5) Determine whether a Loan shall be extended or forgiven pursuant to Section 8097 hereof.

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code.